

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

FILED

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CLERK US DIST. CT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
KOGOK CORPORATION
4011-A Penn Belt Place
Forestville, Maryland 20747,

Plaintiff,

v.

THE CONTINENTAL INSURANCE COMPANY
333 S. Wabash Avenue
Chicago, Illinois 60604

SERVE: CT Corporation System
Resident Agent
4701 Cox Road
Suite 285
Glen Allen, Virginia 23060

and

LIBERTY MUTUAL INSURANCE COMPANY
175 Berkeley Street
Boston, Massachusetts 02116

SERVE: Corporation Service Company
Bank of America Center
16th Floor
1111 East Main Street
Richmond, Virginia 23219,

Defendants

* * * * *

COMPLAINT

Plaintiff, United States of America for the Use and Benefit of Kogok Corporation ("Kogok"), by its attorneys, Philip C. Jones and Greenburg & Spence, LLC, sues Defendants, The Continental Insurance Company ("Continental") and Liberty Mutual Insurance Company ("Liberty

Mutual”), and for its causes of action, says:

Jurisdiction

1. Kogok is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Prince George’s County, Maryland.

2. Upon information and belief, Defendant, Continental, is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business in Chicago, Illinois. Continental is a commercial surety company that issues, among other things, payment and performance bonds on private and public construction projects and, upon information and belief, Continental is authorized to act as a surety in the Commonwealth of Virginia.

3. Upon information and belief, Defendant, Liberty Mutual, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business in Boston, Massachusetts. Liberty Mutual is a commercial surety company that issues, among other things, payment and performance bonds on private and public construction projects and, upon information and belief, Liberty Mutual is authorized to act as a surety in the Commonwealth of Virginia.

4. This Court has jurisdiction pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3133, as the bond upon which this Complaint is based was issued pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3131.

5. Venue is appropriate pursuant to the provisions of the Federal Miller Act, 40 U.S.C. § 3133, as the construction project which is the subject of this Complaint is located in Quantico, Virginia.

Background Facts

6. Upon information and belief, Grunley Construction Company, Inc. (“Grunley”), as general contractor, executed a construction contract (the “Prime Contract”) with the United States

of America, by and through Department of Justice, Federal Bureau of Investigation (the "Owner"), for the construction of a project commonly referred to as the Building 8 Madison Dormitory Renovation (the "Project"), located at the FBI Academy in Quantico, Virginia.

7. As a condition of the aforesaid Prime Contract, and to secure the faithful performance of the same, Grunley, as principal, executed and delivered to the Owner, a labor and material payment bond (the "Bond"), with Continental and Liberty Mutual as co-sureties, for the security of all subcontractors and suppliers on the Project, including Kogok. A copy of the Bond is attached hereto and is incorporated by reference herein as Exhibit A.

8. In anticipation of Grunley's performance of the Prime Contract, Grunley and PowerMax, Inc. ("PowerMax") entered into a contract (the "PowerMax Contract").

9. In anticipation of PowerMax's performance of the PowerMax Contract, PowerMax and Kogok entered into a subcontract (the "Subcontract"), pursuant to which Kogok agreed to furnish labor and materials to complete, inter alia, a new HVAC system, including heat recovery units and ductwork for a price of \$464,550.00.

10. During the course of construction on the Project, Kogok at the request and direction of PowerMax and pursuant to change orders to the Subcontract and/or as reflected in change order requests, rendered additional labor and/or materials for the Project for the price of \$19,992.00.

11. The aforementioned additional work resulted in a revised Subcontract price of \$484,542.00.

12. Kogok rendered the above-referenced labor and materials to the Project in good faith and in a good and workmanlike manner. Accordingly, PowerMax became obligated to pay Kogok the sum of \$484,542.00. To date, Kogok has only been paid the sum of \$364,348.90, and the amount of \$120,193.10 remains due and owing from PowerMax to Kogok for the labor and materials rendered by Kogok to the Project pursuant to the base Subcontract, change orders, and

change order requests.

13. Pursuant to the provisions of 40 U.S.C. § 3133, Kogok timely provided notice of its claim to Grunley. A copy of Kogok's Notice of Claim is attached hereto and is incorporated by reference herein as Exhibit B.

14. More than 90 days has passed and less than one year has passed since Kogok performed the last of the labor or furnished or supplied the material for which the claim is made, and all conditions precedent to bringing a claim on the Bond and to recovering under the Bond have been satisfied.

15. Demand for full payment has been made but payment has not yet been received.

Count I
(Action on Payment Bond)

16. Plaintiff, United States of America for the Use and Benefit of Kogok, adopts and incorporates by reference herein its averments contained in Paragraphs 1 through 15 as stated above.

17. Grunley, as principal, and Continental and Liberty Mutual as co-sureties, executed and delivered the Bond to the Owner for the protection of all persons that furnished labor and/or materials on the Project.

18. Under the terms of the Bond, Continental and Liberty Mutual are liable to Kogok for all unpaid monies due and owing to Kogok on the Project.

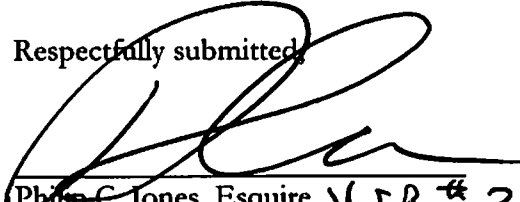
19. As a result of the labor and materials rendered by Kogok to Grunley and PowerMax at the Project, PowerMax became liable to pay Kogok the amount of \$484,542.00, of which the principal amount of \$120,193.10 remains due and owing to Kogok.

20. To date, PowerMax has failed and refused to pay the outstanding balance and the sum of \$120,193.10 remains due and owing to Kogok from PowerMax, thereby triggering Continental and Liberty Mutual's liability to Kogok under the terms of the Bond.

21. All conditions precedent to bringing a claim on the Bond and to recovering under the Bond have been satisfied.

WHEREFORE, Plaintiff, United States of America for the Use and Benefit of Kogok Corporation, demands judgment against Defendants, The Continental Insurance Company and Liberty Mutual Insurance Company, jointly and severally, in the amount of \$120,193.10, plus interest and court costs, and for such other and further relief as the Court deems just.

Respectfully submitted,



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